

FISCAL NOTE

Bill #: SB0465

**Title: Limit underground tank owner liability
under certain circumstances**

Primary

Sponsor: Greg Jergeson

Status: As introduced

Sponsor signature	Date	Dave Lewis, Budget Director	Date
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Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
State Special Revenue (02)	\$2,537,500	\$2,537,500
Revenue:	0	0
Net Impact on General Fund Balance:	0	0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. There were 1,355 underground storage tanks in temporary closure or not upgraded as of December 22, 1998.
2. There are an average of three underground storage tanks at each facility and 90% of the facilities will have a release reported from one of the three underground storage tanks at the facility. No facility will have more than one release.
3. The average reimbursement for a release is \$38,474 as of December 31, 1998. This bill reduces the owner's co-payment from 50% of the first \$35,000 (\$17,500) to 50% of the first \$10,000 (\$5,000). Therefore, the additional reimbursement for each release would be \$12,500.
4. The majority of reimbursement expenses occur within the first two years of discovery.
5. There would be 406 new releases reported during the next biennium with a total cost to the fund of \$5,075,000. In FY 2000 there would be 203 releases at \$12,500 each = \$2,537,500. In FY 2001 there would be 203 releases at \$12,500 each = \$2,537,500.

(continued)

6. There are petroleum storage tanks that would be covered that are not known about at this time that could have both short- and long-term fiscal impacts. Examples of the types of tanks covered would include mobile storage tanks, tanks at federal facilities, and tanks owned by the railroad. The total dollar impact cannot be predicted at this time.

FISCAL IMPACT:

DEQ	FY2000 <u>Difference</u>	FY2001 <u>Difference</u>
FTE	0	0
<u>Expenditures:</u>		
Benefits	\$2,537,500	\$2,537,500
<u>Funding:</u>		
State Special Revenue (02058)	\$2,537,500	\$2,537,500
<u>Revenues:</u>	0	0
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
State Special Revenue (02058)	(\$2,537,500)	(\$2,537,500)

TECHNICAL NOTES:

1. The amendments in Section 1 (1), specifically the language, "or an owner or operator who complies with all the conditions described in subsection (4)(c)" fail to refer to compliance of this owner or operator with 75-11-308, MCA. The use of "or" before "an owner or operator" seems to exempt the owner or operator from the requirements for eligibility under 75-11-308, MCA.
2. There should be a definition of "commercial motor fuel facility" referenced in Section 1 (4)(c).
3. In Section 1 (4) (c)(i), the terms "in a manner provided by law and rule" are vague; reference should be made to 75-11-510, MCA, which requires the reporting.
4. On page 3, line 20, the term "this part" should perhaps be replaced with "this subsection (6)(c)."
5. As to the covenant that is proposed to be created on page 3, lines 18 to 24, there must be a grant of property before the covenant may be established, with sufficient consideration exchanged for the covenant. Under the present language, the owner could not set up a covenant enforceable against himself. To be enforceable, the covenant created in a grant must be specific as to the property affected and the nature of the covenant. Prohibition from use as a motor fuel storage or dispensing facility is not a type of covenant recognized in Title 70, Chapter 17. Finally, the department cannot sign a covenant applying to private property. An owner or operator of tanks, which are presumably personal property or fixtures, independent of a facility cannot create a covenant that binds new tank owners or new property owners because covenants run with land not fixtures.